IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7546 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

SMT.K L PARMAR

Versus

COMMISSIONER HEALTH SERVICES DEPTT. OF HEALTH & MEDICINE

---

Appearance:

1. Special Civil Application No. 7546 of 2001

MR NV ANJARIA for Petitioner No. 1

MR AY KOGJE, AGP, for Respondent No. 1-3

---

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/10/2002

ORAL JUDGEMENT

Rule. Mr AY Kogje learned AGP waives service of rule on behalf of the respondents.

2. The petitioner was promoted to the post of Head Clerk by order dated 1-12-1985 and she was given deemed date of 18-11-1983 on the basis of the roster as the petitioner belongs to a scheduled tribe. On the basis of that seniority, the petitioner was claiming promotion to the post of Office Superintendent.

However, on account of the principle of seniority contained in the Government Resolution dated 7-1-2000 (Annexure G) which was issued on the basis of the judgment of the Supreme Court in Shri Ajit Singh and others vs. State of Punjab and others 1999 (5) SLR, the petitioner was pushed down in the seniority list of Head Clerk from Serial No.22 to 61 consequentially also adversely affecting the petitioner's chances of promotion to the post of Office Superintendent.

3. However, after the aforesaid judgment of the Supreme Court, there is a constitutional amendment being 85th Amendment to the Constitution, whereby Article 16 of the Constitution has been amended to provide that persons belonging to the reserved categories i.e. scheduled caste and scheduled tribe may also be given consequential seniority on promotion.

4. In view of the said amendment, the State Government has now issued another Resolution dated 22-2-2002 (Annexure H) laying down that scheduled caste/scheduled tribe Government employees shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also, and that the said decision shall be effective from 17-6-1995 and the provisions of the Government Resolution dated 7-1-2000 shall stand withdrawn ab-initio. The Resolution further states that seniority of Government employees determined in light of the Government Resolution dated 7-1-2000 shall be revised as if that GR was never issued and that on the basis of the revised seniority, benefits like promotion etc. should be allowed to the concerned SC/ST Government employees (but without arrears by applying principle of `no work no pay'). The Resolution further provides that the senior SC/ST Government employee may be granted promotion with effect from the date of promotion of their immediate junior general category Government employees. Such promotion of SC/ST Government employees may be ordered with the approval of the Appointing Authority at appropriate level after following the normal procedure of Departmental Promotion Committee.

5. In view of the aforesaid principles laid down by the Government Resolution dated 22-2-2002, it is obvious

that the petitioner will be entitled to get consequential seniority upon her promotion to the post of Head Clerk with the deemed date of 18-11-1983 and on that basis her seniority in the cadre of Head Clerks will be restored and she will also be entitled to get promotion to the post of Office Superintendents with appropriate deemed date in light of the principles contained in the aforesaid Government Resolution dated 22-2-2002.

6. Accordingly, the petition is allowed. Rule is made absolute with no order as to costs.

(M.S. Shah,J)
zgs/-